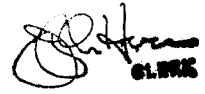


FILED

OCT 16 2000

 CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

SOUTH DAKOTA FARM BUREAU, )  
INC.; SOUTH DAKOTA SHEEP )  
GROWERS ASSOCIATION, INC.; )  
HAVERHALS FEEDLOT, INC.; )  
SJOVALL FEEDYARD, INC.; )  
FRANK D. BROST; DONALD TESCH; )  
WILLIAM A. AESCHLIMANN; )  
SPEAR H. RANCH, INC.; MARSTON )  
HOLBEN; MARSTON AND MARIAN )  
HOLBEN FAMILY TRUST; MONTANA- )  
DAKOTA UTILITIES CO.; )  
NORTHWESTERN PUBLIC SERVICE; )  
and OTTER TAIL POWER COMPANY, )

Plaintiffs, )

v. )

JOYCE HAZELTINE, in her )  
official capacity as Secretary )  
of State of South Dakota, and )  
MARK W. BARNETT, in his )  
official capacity as Attorney )  
General of South Dakota, )

Defendants, )

and )

DAKOTA RURAL ACTION and SOUTH )  
DAKOTA RESOURCES COALITION, )

Defendant-Intervenors. )

Civ. No. 99-3018 CBK

DEFENDANTS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT

COME NOW, Defendants Hazeltine and Barnett, and pursuant to Federal Rule of Civil Procedure 56(b), move and request that this Court grant partial summary judgment in favor of Defendants on the following issues and counts.

1. Defendants Hazeltine and Barnett move for partial summary judgment on their behalf regarding the claims brought by the Utility Plaintiffs which concern the deregulation of the

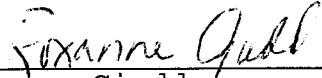
electric industry. The basis for this motion is that these claims are not ripe for judicial review because deregulation of the electric industry has not yet occurred in either the United States or South Dakota, and the requirements of any deregulation which occurs in the future are unknown. This basis and authority therefor are explained in the Brief in Support of Defendants' Motion for Partial Summary Judgment, filed with this Motion and incorporated herein.

2. Defendants Hazeltine and Barnett move for partial summary judgment on their behalf regarding Count III (¶¶ 128-135) of the First Amended Complaint (Doc. 96), the equal protection claims. The basis for this motion is that identical claims have been decided by the Eighth Circuit Court of Appeals with regard to Article XII, Section 8 of the Nebraska Constitution in MSM Farms, Inc. v. Spire, 927 F.2d 330, cert. denied, 502 U.S. 814 (8th Cir. 1991). These provisions of the Nebraska Constitution are substantially the same as the provisions contained in Article XVII, Sections 21 through 24, inclusive, of the South Dakota Constitution (referred to in this litigation as "Amendment E"). Defendants respectfully assert that the MSM Farms decision is therefore controlling on the equal protection claims raised in Plaintiff's Amended Complaint at Count III. The basis and authority for this assertion are more fully explained in the Brief in Support of Defendants' Motion for Partial Summary Judgment, filed with this Motion and incorporated herein.

Defendants note that its motion for partial summary judgment on this Count III addresses only the evidence and legal argument associated with the Defendants' assertion that MSM Farms is controlling on the equal protection claims. Should the Court determine that MSM Farms is not controlling on Count III, Defendants reserve the right to present additional evidence, authority, and argument demonstrating that Amendment E does not violate the equal protection clause of the United States Constitution.

Dated this 16th day of October, 2000.

MARK BARNETT  
ATTORNEY GENERAL

  
\_\_\_\_\_  
Roxanne Giedd  
Assistant Attorney General

Diane Best  
Assistant Attorney General

500 E. Capitol Avenue  
Pierre, South Dakota 57501-5070  
Telephone: (605) 773-3215

pId1012.rg(dh)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of Defendants' Motion for Partial Summary Judgment and Brief in Support of Defendants' Motion for Partial Summary Judgment in the matter of South Dakota Farm Bureau, Inc., et al. v. Joyce Hazeltine, et al. were served upon each of the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the United States mail, at Pierre, South Dakota, on this 16th day of October, 2000:

Richard Gregerson  
Attorney at Law  
P.O. Box 5027  
Sioux Falls, SD 57117-5027

Thomas P. Tonner  
Attorney at Law  
P.O. Box 1456  
Aberdeen, SD 57402-1456

Timothy S. Bishop  
Steffen N. Johnson  
Nicola Jackson  
Mayer, Brown & Platt  
190 S. LaSalle Street  
Chicago, IL 60603

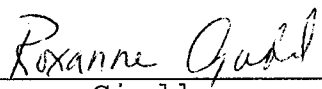
John H. Davidson  
USD Law School  
414 E. Clark St., Rm. 215  
Vermillion, SD 57069

David S. Day  
Woods, Fuller, Shultz & Smith  
P.O. Box 5027  
Sioux Falls, SD 57117-5027

Virginia Brannon  
Jay Tutchton  
University of Denver  
Forbes House  
1714 Poplar Street  
Denver, CO 80220

David A. Gerdes  
Attorney at Law  
P.O. Box 160  
Pierre, SD 57501-0160

Timothy J. Langley  
Attorney at Law  
401 E. Eighth St., #200  
Sioux Falls, SD 57103

  
\_\_\_\_\_  
Roxanne Giedd  
Assistant Attorney General

pld1012.rg(dh)